

## MINUTES OF THE REGULAR MEETING OF APRIL 9, 2015

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 9, 2015 in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Rodney Smith, Mr. I.G. Burton III, Mr. Michael Johnson, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Shane Abbott – Assistant Director.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of March 19, 2015 as amended. Motion carried 5 – 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of March 26, 2015 as circulated. Motion carried 5 - 0.

## OLD BUSINESS

### **Conditional Use #2013 – TBHM, LLC**

Application of **TBHM, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a meadery microbrewery for the manufacturing of honey wine and tasting to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred and Broadkill Hundred, Sussex County, containing 2.99 acres, more or less, land lying north of Route 9 (Lewes Georgetown Highway) 600 feet east of Coolspring Road and south of Railroad (911 Address: None Available) (Tax Map I.D. #334-4.00-34.00 (part of) and 235-31.00-15.00).

The Commission discussed this application which has been deferred since March 12, 2015.

Mr. Johnson stated that the revised site plan indicating the intent to use the easterly portion of the site for the use will be beneficial to visitors and guest and makes more sense than trying to rebuild the original buildings on the westerly portion of the site.

Mr. Ross suggested that the Commission announce that the revised site plans have been received to allow for public review and comments.

There was a consensus of the Commission to leave the record open for 10 days to allow any interested parties to review the revised site plan and provide written comments on the application.

### **Change of Zone #1765 – Red Mill Point, LLC**

Application of **RED MILL POINT, LLC** to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 29,289 square feet, more or less, land lying northeast of Route One (Coastal Highway) across from Red Mill Pond (911 Address: None Available) (Tax Map I.D. 334-1.00-5.00).

The Commission discussed this application which has been deferred since March 12, 2015.

Mr. Burton stated that he would move that the Commission recommend denial of C/Z #1765 for Red Mill Point, LLC for a change in zone from AR-1 to CR-1 based upon the record made during the public hearing and for the following reasons:

- 1) The applicant did not create an adequate record supporting the need to rezone this property from AR-1 to CR-1.
- 2) One of the main reasons stated by the applicant for the rezoning was the need to relocate a septic system from an adjacent property to this property. The use of the property for a septic system does not require a commercial zoning.
- 3) The applicant stated that there are several other possible future uses for the property that may require a commercial zoning. No definite reason or use was given for the change in zone. The change in zone should not be granted based upon speculative future needs of the property owner.
- 4) The applicant stated that it would like to combine this parcel with its existing property next door which is already zoned commercial. While this is often a consideration of the Commission, it usually happens in situations where the entire tract of land has a regular shape, or where a single existing tract has multiple zonings. Here, the applicant acquired the land separately from its existing property, and the combination of it with the existing property does not create a regular shape that will lead to uniform boundaries of a commercial zoning district. So, combining these parcels does not justify the change in zone.
- 5) The applicant has not explained a clear need for the change in zone to CR-1 in this location, or why the existing AR-1 zoning or a conditional use is not appropriate for the site.
- 6) The site, which is a stand-alone parcel given its shape and 29,289 square foot size, is not adequately sized for CR-1 zoning and the possible uses allowed in that district.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried with 3 votes to 1, with Mr. Ross opposing the motion, to forward this application to the Sussex County Council with a recommendation that the application be denied for the reasons stated. Mr. Wheatley abstaining since he was not present during the public hearing.

**Change of Zone #1767 – Adel M. Baghouli**

Application of **ADEL M. BAGHOULI** to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) to a B-1 (Neighborhood Business District) for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 2.867 acres, more or less, land lying south of U.S. Route 9 (Lewes-Georgetown Highway) and 1,000 feet west of Road 282 (Arabian Acres Road) (911 Address: 28990 Lewes-Georgetown Highway, Lewes) (Tax Map I.D. #334-10.00-31.05 and 31.06).

The Commission discussed this application which has been deferred since March 26, 2015.

Mr. Johnson stated that he is still waiting for information on previous rezoning applications on adjacent properties.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

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The Commission discussed C/Z #1769 and C/U #2012, the applications of Ocean Atlantic Communities, LLC, which have been deferred since March 26, 2015.

Mr. Burton stated that he was prepared to make a motion, but asked the Commission for any comments.

Mr. Johnson stated that he feels that the applications are appropriate since the intent of the developer is to clean up an existing Brownfield site; that it makes sense to utilize an existing street access, rather than an access through a concrete plant site; that he would support the intended trail expansion; that he is concerned about pedestrian traffic in any community; that there is a need for some means for safe pedestrian movement; and that since guttering is proposed it seems appropriate to incorporate sidewalks for safety.

Mr. Ross stated that area densities could be considered, referencing Dutch Acres, recorded in 1957, the C-1 commercial zoning established in 1971, and the Village of Five Points Residential Planned Community; that the project seems to be an infill due to the underlying MR zoning proposed; that he questions if Tulip Drive can carry the intended traffic; and that he is concerned about the density and may oppose the motion, if approval is recommended.

Mr. Smith stated that the use will cleanup a Brownfield site; that he is also concerned about safety; and noted that the presentation was very informative.

In reference to Change of Zone #1769:

**Change of Zone #1769 - Ocean Atlantic Communities, LLC**

Application of **OCEAN ATLANTIC COMMUNITIES, LLC** to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) to a MR (Medium Density Residential District) for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 36.98 acres, more or less, land lying north of Route One (Coastal Highway), north of Tulip Drive within Dutch Acres Subdivision, and southeast of Railroad near Nassau; (911 Address: None Available) ( Tax Map I.D. #335-11.00-55.00, 56.00, 59.00, and 59.01).

Mr. Burton stated that he would move that the Commission recommend approval of Change of Zone #1769 for a change in zone from AR-1 Agricultural Residential to MR Medium Density Residential based upon the record made during the public hearing and for the following reasons:

- 1) The site is located in the Environmentally Sensitive Developing Area according to the Sussex County Comprehensive Plan. MR Medium Density Residential zoning is appropriate for this Area under the Plan.
- 2) MR Medium Density Residential zoning is consistent with neighboring zonings. The site is surrounded by lands zoned MR Medium Density Residential and C-1 General Commercial, a railroad, and a non-conforming commercial/industrial use. The MR Medium Density Residential zoning for this parcel is basically infill to match the surrounding zoning districts.
- 3) The site will be served by central water and Sussex County sewer.
- 4) MR Medium Density Residential zoning is consistent with the surrounding uses, which include both single-family and multi-family residences. As a result, rezoning this property to MR Medium Density Residential will not adversely affect the neighboring properties or uses.
- 5) The proposed rezoning to MR Medium Density Residential is consistent with the purpose of the MR Medium Density Residential District, which is to provide for medium density residential areas which are generally urban in character or likely to become urban in character, and where central sewer and water are available.

Motion by Mr. Burton, seconded by Mr. Smith, and carried with 3 votes to 2, to forward Change in Zone #1769 to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 3 – 2. The vote by roll call: Mr. Burton - yea; Mr. Johnson - nay; Mr. Ross - nay; Mr. Smith - yea; and Mr. Wheatley - yea.

In reference to Conditional Use #2012:

**Conditional Use #2012 – Ocean Atlantic Communities, LLC**

Application of **OCEAN ATLANTIC COMMUNITIES, LLC** to consider the Conditional Use of land in a MR (Medium Density Residential District) for a mixed residential use with multi-family dwellings to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 37.26 acres, more or less, land lying north of Route One (Coastal Highway), north of Tulip Drive within Dutch Acres Subdivision and southeast of Railroad near Nassau (911 Address: None Available) ( Tax Map I.D. #335-11.00-55.00, 56.00, 59.00, and 59.01).

Mr. Burton stated that he would move that the Commission recommend approval of Conditional Use #2012 for Ocean Atlantic Communities, LLC for a Conditional Use to allow multi-family dwellings in a MR Medium Density Residential District based upon the record made during the public hearing and for the following reasons:

- 1) This site was previously approved for 152 multi-family units by Ordinance No. 1790. That approval included the entrance to the site via a shared entrance with Atlantic Concrete.
- 2) This application is for 147 units, consisting of a mixture of single family, duplex, and multi-family units. The entrance has been relocated to Tulip Drive, a State maintained right-of-way. These are improvements over Ordinance No. 1790.
- 3) The mixture of single family, duplex and multi-family units is consistent with the surrounding properties, which also include townhouses, multi-family homes and single family homes.
- 4) The use will be served by central water and Sussex County sewer.
- 5) The redevelopment of this site will enable it to be cleaned up through its enrollment in the Brownfields program, which will take it from an unused and overgrown dump site to one that is cleaned and put to a beneficial use for current and future residents of the County.
- 6) As part of the development process, the applicant will be required to comply with all DelDOT requirements concerning traffic and roadway improvements.
- 7) The site is located in the Environmentally Sensitive Developing Area and it is in close proximity to Route One. This mixed residential project is appropriate for this location.
- 8) With the proposed design there will be 26 acres of open space and most of the trees will be preserved on the site.
- 9) This recommendation is subject to the following conditions:
  - A. There shall be no more than 147 units being a mixture of 43 single family units, 46 duplex units, and 58 townhouse units.
  - B. The applicant shall form a homeowners or condominium association responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.

- C. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
- D. All entrance and roadway improvements shall comply with DelDOT requirements.
- E. As offered by the applicant, a five (5) foot easement adjacent to the railroad right-of-way shall be dedicated for use as part of the proposed Georgetown-Lewes Trail and a parking area as shown on the Preliminary Site Plan shall be provided for access to the Trail for the general public.
- F. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.
- G. A 20 foot wide perimeter buffer shall be provided as shown on the Preliminary Site Plan. There shall also be a 20 foot wide buffer along the common boundary with the Villages of Five Point development. The landscaping plan, which may include existing vegetation, shall be included as part of the Final Site Plan.
- H. The development will be served as part of a Sussex County Sewer District and central water will be provided by a public utility company.
- I. The clubhouse, pool and playground amenities shall be constructed prior to the issuance of the 73<sup>rd</sup> residential building permit for the project.
- J. Federal Wetlands shall be maintained as non-disturbance areas, except where authorized by Federal and State Permits. The wetland areas shall be clearly marked on the site with permanent markers to prevent disturbance.
- K. As proposed by the applicant, there shall be a 20 foot buffer from all Federal Wetlands and a 50 foot buffer from all tidal wetlands.
- L. Any site remediation work required by DNREC as a result of the site study performed by Environmental Alliance, Inc. shall be completed in accordance with all DNREC instructions.
- M. As indicated by the applicant, the development shall be operated as an “age restricted, over 55” community as that term is generally interpreted and governed by Federal Law.
- N. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur from Monday through Friday between the hours of 8:00 a.m. and 6:00 p.m., and Saturdays between the hours of 9:00 a.m. and noon. The applicant shall make every effort to establish a temporary construction entrance via Atlantic Concrete and not Tulip Drive.
- O. As requested by the Villages of Five Points, there shall not be interconnecting trails between the Villages of Five Points and the rail trail. Instead, the area where the interconnecting trail was to be located shall now be a 20 foot wide vegetated buffer, like others along the perimeter of the project.
- P. As stated by the applicant, trees shall be preserved to the maximum extent possible. The Final Site Plan shall show all areas where existing trees will not be disturbed.
- Q. This preliminary approval is contingent upon the applicant submitting a Revised Preliminary Site Plan either depicting or noting the conditions of approval on it. The

Staff shall approve the Revised Preliminary Site Plan upon confirmation that the Conditions of Approval have been depicted or noted on it.

- R. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- S. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Mr. Smith questioned the age restriction reference and its relationship with traffic.

Mr. Robertson advised the Commission that the traffic counts presented were calculations relating to an age restricted community.

Mr. Robertson also advised the Commission that if the developer would decide to remove the age restriction provision it would require another public hearing process to change the use.

Motion by Mr. Burton, seconded by Mr. Smith, and carried with 3 votes to 2, to forward Conditional Use #2012 to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 3 – 2. The vote by roll call: Mr. Burton - yea; Mr. Johnson - nay; Mr. Ross - nay; Mr. Smith - yea; and Mr. Wheatley - yea.

#### **Subdivision #2014-2 – Showfield, LLC**

Application of **SHOWFIELD, LLC** to consider the Subdivision of land in an AR-1 (Agricultural Residential District) in Lewes and Rehoboth Hundred, Sussex County, by dividing 132.05 acres into 166 lots, located northwesterly side of Road 267, adjacent to Breakwater RPC (911 Address: None Available) (Tax Map I.D. 335-8.00-46.00, 51.00, and 53.02).

Mr. Abbott advised the Commission that this is the final record plan for a 166 lot cluster subdivision; that the Commission granted preliminary approval on August 7, 2014 for 166 lots and granted a revised preliminary approval on March 19, 2015 to include the Junction Breakwater bicycle trail and a revised street layout; that the conditions of preliminary approval are noted or depicted on the final record plan; that the final record plan complies with the subdivision and zoning codes and the conditions of approval; and that all agency approvals have been received.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to grant final approval of Subdivision #2014-2 for Showfield, LLC. Motion carried 5 – 0.

## PUBLIC HEARINGS

Mr. Robertson described how the public hearings would be conducted.

### **Conditional Use #2014 – Jay Beach**

Application of **JAY BEACH** to consider the Conditional Use of land in an AR-1 (Agricultural Residential District) for a landscaping and site work business to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 5.2594 acres, more or less, land lying west of Beaver Dam Road (Road 285, aka Route 23) 700 feet south of Hopkins Road (Road 286) (911 Address: None Available) (Tax Map I.D. 234-5.00-44.06).

The Commission found that the Applicant provided a survey of his property, depicting the proposed improvements to the site, with the application.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report, dated December 11, 2014, referencing that a Traffic Impact Study was not recommended, and that the current Level of Service “C” will not change as a result of this application.

The Commission found that the County Engineering Department provided comments in the form of a memorandum, dated April 2, 2015, referencing that the site is located in the North Coastal Planning Area; that use of an on-site septic system is proposed; that the project is not capable of being annexed into a County operated sanitary sewer district at this time; that conformity to the North Coastal Planning Study will be required; that the proposed use is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that an email was received from Matthew Cottrell in opposition to this application expressing concerns that the site would be unsightly and detract greatly from the agricultural and residential nature of the neighborhood; that trucks, tractors and other heavy earth moving equipment would be parked on the site; that piles of earth, gravel, and stumps may be stored on the site; that such commercial storage would be unacceptable on this lot, which is open farmland with no natural screening; that any stored materials would be visible from Beaver Dam Road; that the proposed site plan includes an accessory building, labeled “shop” that would be located in the front yard; that the shop would block the view of the dwelling from Beaver Dam Road, making the property look more like a commercial facility than a residence; that construction of a dwelling and two shops as described on the site plan would diminish the current character of the neighborhood; that activity already underway on the property raises questions about any intent of the applicant to comply with existing zoning; that piles of earth are already being stored on the property; that gravel has been dumped along Beaver Dam Road to establish an impromptu driveway, which is now being used by heavy trucks to enter and exit Beaver Dam Road; that the origin and nature of the soil being stored on the premises are unknown and it is unclear if the new gravel driveway has DelDOT approval.



The Commission found that Jay Beach was present and stated in his presentation and in response to questions raised by the Commission that his son recently graduated from high school and always wanted to operate equipment; that his son started the business three years ago; that they currently live on a farm north of Route 24; that the applicant will be living on the property; that the dirt on the property is to be used for fill on the property; that the septic will have to be raised on the property; that the proposed buildings will be nice looking farm building to blend in with the area; that he will be maintaining the site in the same manner as his has his current property; that his neighbor just received approval for a produce/flower and garden center; that the site is currently vacant; that the equipment proposed to be utilized with the business includes a back-hoe, a skidder, a dump truck and a haul trailer; that the primary intent is for landscaping use, and some site work, to be performed off-site; that the jobs will be small jobs, not developments; that currently his son operates the business with some assistance from the applicant; that they may in the future have four employees; that noise should be minimal since he works nights; that the entrance recently installed is for construction purposes; that there will not be any retail sales from the site; that storage will be minimal; that no tree stumps will be stored on the site; that the construction equipment will be stored outside; that business hours will be from 7:00 a.m. to 7:00 p.m.; that maintenance of the equipment will be performed in the shop building; that the building will be 200 feet from Beaver Dam Road; and that the site plan has not yet been submitted to the Sussex Conservation District, but understands that he will have to submit plans to the District.

The Commission found that Joseph Morris, Matthew Cottrell, Tom Kucharik, and Tina Morris were present in opposition to this application and expressed concerns that the area is agricultural/residential; that the use could evolve into a more commercial/industrial activity with more equipment, referencing dozer, etc., than referenced; that Mr. Morris' brother sold to Mr. Beach with the understanding that the property was to be used as a residential lot, not as a business; that the adjacent property was recently approved for a flower/produce business which has an agricultural character; that the Streets Welding parcel further north on Beaver Dam Road is an eyesore; that noise is a concern; questioning maintenance of equipment and waste products; concerned about the lack of notice to residents in the area; that the use will detract from the neighborhood; that equipment will be stored in front of the dwelling, which is proposed to be built in the rear; that there is no stormwater information available for the project; questioning if groundwater has been tested since there are concerns about the soils that are being brought onto the site could have contaminants and drain into the groundwater; that the trucks bringing materials onto the site have from 6 to 10 wheels; and expressing concerns about early morning truck noises.

The Commission found that Mr. Kucharik submitted a letter expressing his opposition to this application.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration, and for the staff the check for any restrictive covenants and for a copy of the Conditions of Approval imposed for the Kucharik application for conditional use. Motion carried 5 – 0.

### **Change of Zone #1764 – Coastal Club, LLC**

Application of **COASTAL CLUB, LLC** an Ordinance to Modify Condition Number 1, 4, 13, and 17 imposed on Ordinance No. 1770 for Change of Zone No. 1554, the application of Marine Farm, LLC for the Coastal Club, a MR-RPC (Medium Density Residential District – Residential Planned Community), and to amend the Comprehensive Zoning Map of Sussex County from a MR-RPC (Medium Density Residential District – Residential Planned Community) to a MR (Medium Density Residential District) for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, for a 13.425 acres, more or less, portion of the property (911 Address: None Available) (Tax Map I.D. 334-11.00-5.00, 395.00, and 396.00).

The Commission found that the Applicants submitted an Exhibit Packet on October 1, 2014, which included a request to revise the Conditions of Approval for C/Z #1554, specifically Conditions of Approval number 1, 4, 13, and 17, and requesting that a 13.425 acre portion of the original MR-RPC be removed from the RPC; that surveys and land descriptions were attached; that the parcel was formerly intended to be used for the Community Wastewater Treatment Facility for the Coastal Club community; that the Coastal Club community is now intended to be served as a part of a Sussex County Sewer District; that the Packet includes the original Conditions of Approval with revised wording for Conditions of Approval 1, 4, 13, and 17; and that copies of the original Conditions of Approval from the Minutes of the Sussex County Council, dated April 19, 2005 were attached.

The Commission found that the Applicants submitted a packet of Exhibits recently, which include a copy of the Coastal Club Master Plan; the original Conditions of Approval from C/Z #1554; suggested revised Conditions of Approval; a copy of a letter from the Director of Planning and Zoning, dated October 5, 2005; and copies of the Minutes of the Planning and Zoning Commission for June 14, 2007.

The Commission found that the County Engineering Department Utility Planning Division provided comments in the form of a memorandum, dated April 1, 2015, referencing that the project is capable of being annexed into a County operated and maintained sanitary sewer district, the Goslee Creek Planning Area; that wastewater capacity is available; that Ordinance 38 construction will be required; that the current System Connection Charge Rate is \$5,500.00 per Equivalent Dwelling Unit (EDU); that the location and size of laterals and connection points are to be installed in accordance with the Goslee Creek Planning Study; that conformity to the North Coastal Area Planning Study will be required; that the County Engineering Department requires modification to the proposed Conditions; that the County requires design and construction of the collection and transmission system to meet County Engineering Department requirements in accordance with the Goslee Creek Planning Study; that the County Engineer must approve the connection points; and that a sewer concept plan must be submitted and approved by the Engineering Department; and that the Engineering Department provided suggested amendments to Condition of Approval Number 17, as it relates to Sewer, Reece's Lane, and Others.

The Commission found that the Sussex Conservation District provided comments in the form of a memorandum, dated March 6, 2015 that relate to the overall project, not the Conditions of Approval Numbers 1, 4, 13, and 17 and that those comments are a part of the record.

The Commission found that Preston Schell, one of the developers, was present with James Fuqua, Esquire with Fuqua, Yori and Willard, P.A., Zac Crouch, Professional Engineer with Davis, Bowen and Friedel, Inc., and Bruce Wright with the First State Community Action Agency and that they stated in their presentations and in response to questions raised by the Commission that they are applying to rezone a 13.4 acre portion of the property from MR/RPC to MR by abandoning the RPC overlay, and to amend or modify four of the Conditions of Approval relating to C/Z #1554; that the MR/RPC zoning was approved by the Sussex County Council in April 2005 with 18 Conditions of Approval; that the original project went into default; that the applicants have purchased the property from the lender and have started developing Phase One of the project; that the request for rezoning is for a 13.4 acre portion of the property that fronts Beaver Dam Road and is separated by a branch and wetlands from the larger portion of the site, and was originally intended for a wastewater treatment facility for the project; that the 13.4 acre portion of the property is across from Hopkins Farm Road; that the project will now be served by Sussex County sanitary sewer; that the sanitary sewer system is now under construction, therefore there is no need for a private sewerage treatment facility; that this rezoning will not impact the original RPC; that there will be little to no impact on the density for the project; that the MR zoning will remain with the 13.4 acre portion of the property; that in reference to the proposed amendments to the original Conditions of Approval; Condition #1 is proposed to be corrected to designate the correct number of units from 432 to 412 single family lots, since 20 lots were eliminated with a roadway connection to Jim Town Road; Condition #4 is proposed to be corrected to change the reference from central sewer to Sussex County Sewer District; Condition #13 is proposed to be amended to read “The 42 acre area previously designated as an Eagle Wildlife Habitat Conservation Area shall now be designated as community open space and may be utilized for passive or active community recreation uses or natural open space. No construction of residential units shall be permitted in this area”. The change is requested since the Bald Eagle vacated the nest, therefore the management plan is no longer required; Condition #17 was voluntarily proffered by the original developers and then required by Sussex County Council to benefit the residents of Jim Town Road as it relates to central sewer, central water, street lighting, and sidewalks; that there are some housekeeping items included in these proposed revisions and should be considered reasonable requests; that in reference to Condition #17A which relates to the previously referenced Sussex County Sewer District should also include a reference that no one is required to hook up to the sewer system; that the developers are requesting that Conditions 17C which references street lighting and 17D which references sidewalks be deleted; that in 2007 a request was applied for to amend the Conditions of Approval on behalf of the residents of Jim Town Road as the Conditions of Approval related to these same items; that the Planning and Zoning Commission recommended that the request be denied, and not long after the developers withdrew their requests; that the Conditions of Approval reference “if desired by the residents of Jim Town” which was not clear; that the current developers of the project desired to get the opinion of the residents of Jim Town and asked for assistance from the County and the First State Community Action Agency; that in

2014 the First State Community Action Agency assisted the developers by holding a public meeting to ballot the residents to determine if street lighting and sidewalks were supported by the residents; that it was determined that 44 residents could vote; that 29 of the residents were property owners; that letters were sent to the 29 property owners; that it was reported that in reference to street lighting there were ten (10) votes in support and four (4) votes in opposition; that in reference to sidewalks there were eleven (11) votes in support and three (3) votes in opposition; that since only 14 residents voted it was not clear what the majority of the residents want; that it was never the intent of the original developer or the current developers to get out of building sidewalks or street lighting; that they are seeking guidance from the County; that ballots were issued to the property owners; that letters were sent out requesting a response on the ballots; that staff of First State Community Action Agency talked to residents in the area in July 2014 and asked the residents to communicate; that there appeared to be some strong support and some strong negativity; that all responses received were property owners; that some want sidewalks and some don't; that if individually voting any one resident can refuse to grant an easement for a sidewalk on their property; that they prepared a preliminary plan and found that the pavement is higher at the crown of the road than the properties; that the ditches may have to be moved; that either a drainage easement or the sidewalks shall be on private properties; that exhibits that were displayed at the public meeting showed the topographic issues that need to be addressed if sidewalks are placed; that the ordinance references that sidewalks shall be located on one side of Jim Town Road, not both sides, therefore, which side will the sidewalks be built upon; that the developers are happy to install both sidewalks and street lighting, and are only asking for directions; and that the southwesterly side of Jim Town Road seems to be the least impacting on the residents.

The Commission found that Roslyn Allen Echols was present with interest in properties along Jim Town Road and stated that she has no objection to the modification to Condition #1; that the property owners should have the right to decide if they want to be impacted by sewer, water, sidewalks and street lighting; that she has no objection to the modification to Condition #14; that sewer and water should be available if the owners chose to connect; that the majority of the residents do not want an 8-inch sewer line along Jim Town Road; that the Jim Town Road community has existed for 100 years or more; that the residents are concerned about the connection and collection fees by the County, and fear that they might lose their properties due to the impact by fees; that if the sewer and water lines are installed and the residents septic or well fails, the State DNREC will require connection to the sewer and water system; that the majority of the residents have security lighting and do not need street lighting; that sidewalks on one side of the Road is not helpful and only serves a few; that the majority of the residents do not want sidewalks; and that some of the homes are too close to Jim Town Road and will be impacted by sidewalks or easements.

The Commission found that Michael Miller, a resident and property owner, was present with interest and stated that he represents some of the residents of Jim Town Road and that the majority of the residents want street lighting and sidewalks; that he has no objection to the rezoning portion of this request; that he has no objection to the Bald Eagle portion of the project being open space; that he supports sidewalks and street lighting; that sidewalks should be on

both sides of Jim Town Road; that he described his power point display which contained photographs of the Lewes Crossing subdivision and other projects; that the photographs depict 30' wide street paving, curbing/guttering, grass and sidewalks; that ditching may have to be piped and covered; that some projects have bike/pedestrian paths along Beaver Dam Road; that the residents do not want easements for sidewalks on individual properties; that he feels that the ballots cast indicate that a majority of the residents want sidewalks and street lighting; that if a 50-foot right-of-way exist for Jim Town Road, there is space for 22-foot of pavement, curbing and guttering with sidewalks; that adequate street lighting can be installed on the existing electrical poles along Jim Town Road; that for safety reasons the sidewalks and street lighting should be installed; that sidewalks on the easterly side would be preferred since most of the homes are on the easterly side of Jim Town Road; and that sidewalks would really be preferred on both sides to protect all of the residents.

The Commission found that Gerald Allen, a property owner, was present and stated that he does not permanently live along Jim Town Road; that the ballots were not clear or explained; that the counts were questionable, and that some of the residents did not vote since the ballots were not clear; that he is not sure what happened to the Bald Eagle nest; that street lights could be placed on the existing poles; that street lighting is a good idea, if at no cost to the residents; that he has no objection to street lighting; that he has no objection to sidewalks if in the street right-of-way; and that he opposed sidewalks on individual lots.

The Commission found that Monroe Brittingham, a property owner and resident, was present and stated that he was originally opposed to the project and all of the conditions imposed on the area of Jim Town Road; and that he now supports the need for sewer, water, street lighting, and sidewalks.

The Commission found that Gaye Allen Moore, a property owner, agreed with Ms. Echols, and stated that another Condition has not been resolved, referencing Reece's Lane, which has not been conveyed to the adjoining property owners; that she is concerned that the State DNREC will require connection to the sewer and water if systems fail; that she opposes street lighting, since they are not needed; that she opposes sidewalks; that drivers need to realize that they are in a residential area and obey the speed limits.

The Commission found that Mr. Crouch responded that sidewalks within the existing right-of-way will require improvements, referencing that the road and properties have to be designed to drain; that an easement will still be needed, whether for drainage or sidewalks; that DelDOT will require vertical curbing, not rolled curbing; that based on State specifications and guidelines the streets would have 11-foot lanes, 2-foot of curbing, 3-foot of grass, 5-foot of sidewalk, a 2-foot grass strip for safety, and a graded slope of 4:1 which is a total redesign of the Jim Town Road; that 4:1 backslopes would be required; that if they can't get the easements, the improvements cannot be completed; that separation is required from sidewalk to curbing; that inlets or catch basins would have to be installed on private properties; that they cannot conform to DelDOT regulations within a 50-foot right-of-way; that if this was a new project, it can be designed up front; that easements will need to be granted; that the improvements to the right-of-way depend on the elevation of the properties; that the pavement section is higher than the properties; that if

a property owner does not agreed to granting an easement the sidewalks will be segmented; that DelDOT may not even approve the intended changes; and that they will have to abide by DelDOT regulations and referenced clear zones, ADA compliance, and other issues.

The Commission found that Michael Miller responded that a variance from DelDOT may be needed, and that it can be engineered to work; that the road can be shifted and/or graded down so that the road is not higher than the properties; and that DelDOT has granted variances in the past.

The Commission found that Ms. Echols responded that some of the homes are already too close to Jim Town Road.

The Commission found that Gerald Allen responded that it can be done, but it will cost; that the Coastal Club needed the Jim Town residents when the project was approved; that the developers must not need the residents now and that this may be the reason why the amendments are being proposed; that Jim Town Road needs to be fixed; that neighbors want the improvements; and the improvements will improve Jim Town

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

### **Change of Zone #1768 – Convergence Communities**

Application of **CONVERGENCE COMMUNITIES** to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) to a MR-RPC (Medium Density Residential District – Residential Planned Community) for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 49.66 acres, more or less, land lying north of Road 361 (Muddy Neck Road), east and south of Ocean Way Estates Subdivision, west of Assawoman Canal, and also north of Ocean View Beach Club Community in the Town of Ocean View with access from Nantasket Avenue, Old Orchard Avenue, Ocean Beach Avenue, and Gooseberry Avenue (911 Address: None Available) (Tax Map I.D. 134-17.00-12.00).

The Commission found that the Applicants provided a survey/site plan with the application, dated December 16, 2014.

The Commission found that on March 30, 2015 the Applicants provided an Exhibit Booklet for consideration which contains a Presentation Outline; a Data Column; a MR-RPC Rezoning Site Plan; a Revised MR-RPC Rezoning Site Plan amended to reference Technical Advisory Committee comments; a series of maps, aerials, and renderings; a copy of a portion of the 1868 Beers Atlas of the Lewes and Rehoboth Hundred; a copy of the Response to the Preliminary Land Use Service (PLUS) comments; an Environmental Assessment and Public Facilities Evaluation Report; references to compliance with the standards of Chapter 99-9C of the Subdivision Ordinance; Technical Advisory Committee responses; a copy of the DelDOT Support Facilities Report; and a Willing and Able to Serve letter from Tidewater Utilities, Inc. as it relates to central water.

The Commission found that the Applicants provided additional Exhibits on March 25, 2015, which includes a Google Earth aerial photograph; a copy of the Strategies for State Policies and Spending – Investment Level map; a zoning map of the general area; a copy of the Ocean View Beach Club Site Plan on the adjacent property, which is within the Town of Ocean View; copies of Minutes of the Planning and Zoning Commission for May 8, 2008 and May 22, 2008 relating to C/U #1790, the application of Martha's Light, LLC for a continuing care retirement community; and copies of Minutes of the Sussex County Council for June 3, 2008, relating to C/U #1790, granting approval of the continuing care retirement community.

The Commission found that the County Engineering Department provided comments in the form of a memorandum, dated April 2, 2015, referencing that the site is located in the Bethany Beach Sanitary Sewer District Planning Area; that wastewater capacity is available for the project; that Ordinance 38 construction will be required; that the current System Connection Charge Rate is \$5,500.00 per Equivalent Dwelling Unit (EDU); that the proposed project must extend mainline sewer and make its connection in the 15-inch gravity line in Ogre Drive; that alternatively, a connection point may be available along the parcels southerly property line when the Ocean View Beach Club completes construction of the sewer system to serve that community; that the project is capable of being annexed into the Bethany Beach Sanitary Sewer District following completion of certain administrative procedures; that sewer service and connection to the sewer system is mandatory; that the project is within system design assumptions and adequate sewer capacity is available; that the proposed development will require a developer installed collection system in accordance with County standard requirements and procedures and the South Coastal Area Planning Study, 2005 Update; that the County Engineer must approve the connection point; that the Engineering Department requires that a Sewer Concept Plan be submitted for review and approval prior to requesting annexation into the District; that the Concept Plan shall include provisions for an 8-inch connection point extended to the remaining portion of the parcel; that one-time system connection charges and annual front footage and service charges will apply; and that there will need to be a memorandum of understanding signed prior to annexation, obligating the developer to pay front footage assessment and system connection charges in accordance with County policies and procedures for non-exempt properties.

The Commission found that Doug Freedman, the Applicants' representative, was present with James Fuqua, Esquire of Fuqua, Yori & Willard, P.A., and Zac Crouch, Professional Engineer with Davis, Bowen and Friedel, Inc. and that they stated in their presentations and in response to questions raised by the Commission that the applicants are proposing to develop this 49 acre site with 164 residential units (120 single family dwellings and 44 townhouse units); that the site is located to the rear of the Ocean View Beach Club development, now under construction, which is developing 300 residential units (150 single family dwellings and 150 multi-family dwellings) and 1.6 acres of commercial within the Town of Ocean View; that residential developments surround the property with Ocean Way Estates Subdivision to the north and west, the Assawoman Canal and Sea Colony West Residential Planned Community to the east, and the Clearwater Residential Planned Community, Waterside Residential Planned Community, and Bethany Meadows and other developments to the south; that the Convergence Communities are purchasing the property from the Trustees of Episcopal Church, except for a 5.25 acre parcel

with an access easement which is intended for a church in the future; that the property was originally gifted to the Trustees by Mary Lighthipe; that the Trustees went into an agreement with Martha's Light, LLC who applied for a conditional use for a continuing care retirement facility; that the facility was never built and that the applicants are now applying for this Residential Planned Community; that water will be provided by Tidewater Utilities, Inc.; that central sewer will be provided by Sussex County; that the site is located in the Millville Fire Company service area; that Delmarva Power will provide electrical service; that access is proposed through the Ocean View Beach Club which is being developed by the same developers; that recreational amenities will serve both projects; that a fitness center, Spa, indoor and outdoor swimming pools, and sports courts will be provided; that according to the Strategies for State Policies and Spending documents the site is located in an Investment Level 2, where the State anticipates growth to take place; that according to the Sussex County Comprehensive Plan the site is located in the Environmental Sensitive Developing District Overlay Zone and that the housing types are appropriate; that the project complies with the purpose of the MR Medium Density Residential District, and is surrounded by MR Medium Density Residential zoning and lands improved with residential planned communities, making the residential planned community portion of the application consistent; that the 164 units gross calculation is 3.23 units per acre; that the Ocean View Beach Club density is 4.2 units are acre; that the project is basically an infill between the other projects in the area with a similar or lower density; that they did not consider the Bonus Density provisions of the Zoning Ordinance; that there are multiple choices when deciding how to apply for an application: Subdivision, Cluster Subdivision, Conditional Use, Residential Planned Community, Medium Density Residential – Residential Planned Community, Bonus Density Subdivision, and Bonus Density Multi-Family; that the choice is based on numerous factors including, but not limited to, the relationship to plans (State Strategies and Comprehensive Plans), the availability of sewer and water, transportation, and the activities in the surrounding area; that since the Comprehensive Plan references that a Residential Planned Community is appropriate it should be considered; that 75% of the project is single family residential; that a Traffic Impact Study was not required due to improvements already designed for the general area; that the developers will be participating in an Area Wide Signal Agreement if required by DelDOT; that the project is within a Flood Zone area which has a 5-foot Base Flood Elevation; that all units will be above the Base Flood Elevation; that the site is located within the Inland Bays Watershed; that streets will be built to County standards and specifications; that stormwater management facilities and erosion and sedimentation control facilities will be improved per the requirements of the Sussex Conservation District; that the existing ditches will remain and be cleaned out; that the pipes in the ditches will be cleared and some probably enlarged; that they are planning on using wet ponds, bio-swales and bio-strips in the design; that a 20-foot wide landscape buffer will surround the project; that additional trails and recreational tot-lots will be installed in this project; that single family homes will be built along the entire perimeter; that 80% of all the lots front onto open space; that interconnection is proposed to the State Assawoman Canal Trail; that 50-foot wide buffers will be provided from an tidal wetlands; that they will be resubmitting for a jurisdictional determination for the wetlands; that sidewalks will be provided along both sides of all streets; that the Ocean View Beach Club is proposing to provide a shuttle service to the beaches and shopping; that adequate



parking is available in amenity areas; that streets, sidewalks and trails interconnect to the Ocean View Beach Club; that the Applicants chose to apply to the County, rather than the Town of Ocean View; that sidewalks are located within the street right-of-ways and trails are in open spaces; that streets will have curb and guttering; and that the density for this project is similar to area projects.

The Commission found that Mr. Fuqua submitted suggested proposed Findings of Fact and Conditions of Approval, which includes:

Suggested Proposed Findings of Fact:

- 1) The site is located in Investment Level 2 according to the State Strategies for Policies and Spending. Investment Level 2 reflects areas where growth is anticipated by Local, County and State Plans in the near term future. State investments will support growth in these areas.
- 2) The proposed MR/RPC development meets the purposes of the MR and RPC zoning designations since it provides medium-density residential development in a developed area where County sewer and central water are available by creating a superior living environment.
- 3) The proposed MR/RPC development is in accordance with the Sussex County Comprehensive Plan in that it is located in a designated “Growth Area” where development is directed and planned.
- 4) The site is located in the Environmentally Sensitive Developing Area where the Plan states that a full range of housing types are appropriate including single family homes, townhouses, and multi-family units.
- 5) Central sewer will be provided as part of Sussex County’s Bethany Beach Sanitary Sewer District and adequate wastewater capacity is available.
- 6) Central water for domestic use and fire protection will be provided by Tidewater Utilities, Inc.
- 7) The proposed development will comply with all DelDOT requirements including entrance locations, roadway improvements and contribution toward an area wide study. A new entrance onto Muddy Neck Road will not be necessary since the proposed development will utilize the existing entrance for the adjacent development, The Ocean View Beach Club.
- 8) The proposed development is consistent with the nature of the area, which consists of a variety of residential developments including single family and multi-family developments.
- 9) The proposed development will share an entrance and be an extension of an adjacent development, The Ocean View Beach Club. The proposed density and residential unit styles area compatible with and similar to the density and unit styles of The Ocean View Beach Club development.
- 10) The site had previously been approved as a conditional use for a continuing care retirement community containing 232 single family homes, apartments and villas and 94 health care units (C/U #1790 as approved).

- 11) With the conditions placed on the development, the MR/RPC designation is appropriate and in accordance with the Comprehensive Plan since it creates a large scale development with a superior living environment and the use of design ingenuity at an appropriate density.

Suggested Proposed Conditions of Approval:

- A) The maximum number of dwelling units shall not exceed 164, comprised of 120 single family detached dwellings and 44 townhouse units.
- B) Site Plan review shall be required for each phase of development.
- C) All entrance, intersections, interconnection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's requirements, or in accordance with any further modifications required by DelDOT.
- D) The development shall be served as part of the Bethany Beach Sanitary Sewer District in accordance with the Sussex County Engineering Department specifications and regulations.
- E) The development shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
- F) Stormwater management and erosion and sediment control facilities shall be constructed in accordance with applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices (BMPs). The Final Site Plan shall contain the approval of the Sussex Conservation District.
- G) The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications. As proffered by the Applicant, the street design shall include sidewalks on both sides of the streets and street lighting.
- H) The Applicant shall submit as part of the site plan review a landscape plan showing the proposed landscape design for all buffer areas.
- I) Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur from Monday through Saturday and only between the hours of 7:00 a.m. and 6:00 p.m.
- J) The Applicant shall cause to be formed a homeowners' or condominium association to be responsible for the maintenance of streets, roads, buffers, open spaces, stormwater management facilities and other common areas.
- K) Federal and State wetlands shall be maintained as non-disturbance areas, except where authorized by Federal or State permits.
- L) Owners and residents of the proposed development shall be entitled to use all recreational facilities of the Ocean View Beach Club development under the same right, responsibilities and fees applicable to owners and residents of the Ocean View Beach Club.
- M) Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- N) The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

The Commission found that there were no parties present in support of or in opposition to this application.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to defer action for further consideration and to leave the record open for review of the amenities and for 14 days for further comments. Motion carried 5 – 0.

## OTHER BUSINESS

### **Subdivision #2013 – 2 Vesco, LLC Love Creek Landing – Revised Preliminary**

Mr. Abbott advised the Commission that this is a revised preliminary site plan for a 213 lot cluster subdivision application which the Commission granted preliminary approval with conditions on June 13, 2013; that Subdivision #2008 – 8 received preliminary approval from the Commission for 183 lots on October 22, 2009; that a 30 lot expansion for a total of 213 lots was approved on June 13, 2013; that Condition of Approval C for the 30 lot expansion required the applicant to submit a revised preliminary plan noting or depicting the conditions of this approval and the conditions of approval for Subdivision #2008-8 and that the revised plan shall be subject to the review and approval of the Commission; that the conditions of approval for both applications are noted on the site plan; that preliminary approval is valid until June 13, 2016; and that the Commission was previously provided a copy of the revised preliminary plan.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to grant revised preliminary approval. Motion carried 5 – 0.

### **Saddle Ridge MR/RPC CZ #1742 Site Plan – Route 24**

Mr. Abbott advised the Commission that this is a preliminary site plan for an 81 lot residential planned community; that this RPC was approved on September 30, 2014 with 12 conditions of approval; that the conditions are noted or depicted on the site plan; that the interior street design is the same as the plan that was submitted during the public hearing process; that instead of detached condominium style homes as represented during the public hearing, the units are proposed to be fee simple lots; that the proposed setbacks are 20 feet front yards with 15 feet on corner lots and 10 feet side and rear yards; that the plan presented during the hearing process called for an 18 foot front yard setback with 7 feet between units within a 165 foot building envelope with a 40 foot separation between envelopes; that sidewalks are provided on both sides of all streets; that a pool, recreation facility and 15 parking spaces are proposed; that Sussex County will provide central sewer and Tidewater Utilities, Inc. will provide central water; that the site is not located in a flood zone and there are no impacts to the wetlands; that if preliminary approval is granted, final approval shall be subject to the review and approval of the Planning and Zoning Commission upon receipt of all agency approvals since the project is a residential planned community; and that the Commission was previously provided a copy of the site plan.

Mr. Robertson advised the Commission that this site plan has been revised from condominium detached units to fee simple lots and that the Commission needs to determine if the revision warrants an amended application.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to approve the site plan as a preliminary since the revised method of sale is not that much of a change. Motion carried 5 – 0.

**Morris E. and Sara M. Justice  
Parcel & 50' Right-of-Way – Trails End Drive**

Mr. Abbott advised the Commission that this is a request to create a 1.0 acre lot with access from a 50 foot right of way; that the owner is proposing to create the 50 foot right-of-way over an existing dirt road inside of an existing 50 foot right-of-way; that the request may be approved as submitted, or an application for a major subdivision can be required; that if the request is approved as submitted, this would be the third parcel having access from the right-of-way and it should be stipulated that any further subdivision off of the right-of-way will be required to go through the major subdivision process; and that the Commission was previously provided a sketch drawing of the request.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve this request as a concept with the stipulation that any further subdivision of the property will require an application for a major subdivision. Motion carried 5 – 0.

**BLN, LLC  
2 Parcels & 50' Easement – Route 18**

Mr. Abbott advised the Commission that this is a request to subdivide a 13.161 acre parcel into 2 parcels with access from a 50 foot easement; that Tract 1 will contain 3.951 acres and is zoned AR-1 and C-1; that there is an existing storage facility on the C-1 portion of the site; that Tract 2 will contain 9.210 acres and is zoned AR-1; that the owner is proposing to create the 50 foot easement at a gated entrance for the storage facility; that the request may be approved as submitted, or an application for a major subdivision can be required; and that the Commission was previously provided a survey drawing of the request.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

Meeting adjourned at 11:00 p.m.